



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

S.B. NO. 2588, S.D. 1, H.D. 1, RELATING TO LIMITATION OF ACTIONS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 22, 2012

TIME: 2:15 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General has always appreciated the intent of bill, but had suggested certain changes to earlier forms of this bill. House Draft 1 of this bill has incorporated our suggested changes and, therefore, the Department of the Attorney General has no further comment and has no objection to this bill.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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March 20, 2012

Honorable Gilbert S.C. Keith-Agaran, Chairman
Honorable Karl Rhoads, Vice Chairman
Committee on Judiciary
Hawaii State House of Representatives
State Capitol
Honolulu, Hawai'i 96813

Dear Representatives Keith-Agaran and Rhodes,

Subject: Senate Bill No. 2588, S.D.1, H.D.1
Relating to Limitations of Actions

The City and County of Honolulu supports the intent of this bill, to reinforce legal remedies available to minor victims of sexual offenses. However, Senate Bill No. 2588, S.D.1, H.D.1, as currently drafted, would severely impair the City's ability to fairly defend against such claims. Unlike the State, the counties do not possess sovereign immunity. Counties, like the State, deal with thousands of patrons on an annual basis and frequently face personnel changes, making it difficult to track down relevant witnesses. Consequently, counties frequently find themselves at a distinct disadvantage when facing allegations of a considerably stale nature. This, no doubt, is why H.R.S. § 46-72 (the Statute of Limitations for claims against the counties) was originally established at six (6) months. We believe that the current Statute of Limitations for claims against municipalities is fair and reasonable.

If this bill is to apply to the City, we would like to bring to this Committee's attention to particular concerns first, with the language used in the second sentence of subsection (b):

(b) ..." [a] claim may also be brought..."

This suggests that the legislature is creating an entirely new cause of action. While we believe the intent is merely to delineate the circumstances under which a common law claim could be brought, there is sufficient ambiguity in the wording to create a colorable argument that a new cause of action is what was intended.

Honorable Gilbert S.C. Keith-Agaran, Chairman
Honorable Karl Rhoads, Vice Chairman
March 20, 2012
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Second, the language in subsection (b), subsection (2):

- (2) The person who committed the act of sexual abuse and the minor were engaged in an activity over which the legal entity had a degree of responsibility or control.

This section is extremely vague and broad in its scope and would expand cognizable claims during this period far beyond common law principles. The counties are involved with a multitude of activities for which the counties have *some* degree of responsibility. For example, sporting activities occur on county parks maintained by counties under schedules dictated by county employees. However, such "responsibility" and "control" bear no relation to any sexual offenses independently committed by tortfeasors in the course of participating at such events. Hence, we would recommend that this clause be eliminated.

Accordingly, the City proposes the following amendments to subsection (b):

- (b) For a period of two years following the effective date of Act , Session Laws of Hawai'i, 2012, a victim of child sexual abuse that occurred in this State who has been barred from filing a claim against the victim's abuser due to the expiration of the applicable civil statute of limitations that was in effect prior to the effective date of Act , Session Laws of Hawai'i 2012, may file a claim in the circuit courts of this State against:

- (1) the person who committed the act of sexual abuse; and
- (2) a legal entity, except the State and the counties, if the person committing the act of sexual abuse against the minor was employed by an institution, agency, firm business, corporation, or other public or private legal entity that owed a duty of care to the victim; provided that damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity.

Thank you for your consideration of our request.

Sincerely,


ROBERT CARSON GODBEY
Corporation Counsel

RCG:nc



HAWAII CATHOLIC CONFERENCE
6301 Pali Highway
Kaneohe, HI 96744-5224

Email to: JUDTestimony@Capitol.hawaii.gov
Hearing on: Thursday, March 22, 2012 @ 2:15 p.m.
Conference Room #325

DATE: March 20, 2012

TO: House Committee on Judiciary
Representative Gilbert Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: OPPOSITION TO SB 2588 SD 1 HD1 RELATING TO LIMITATION OF ACTIONS

Honorable Members of the House Committee on Judiciary, I am Walter Yoshimitsu, representing the **Hawaii Catholic Conference**. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, which under the leadership of Bishop Larry Silva, represents the Catholic Church in Hawaii. **We oppose this bill for the following reasons:**

This bill could cause substantial problems for all types of programs and nonprofits, including schools, churches, camps, and youth programs. The bill expands the statute of limitations for commencement of a tort action for acts of child sexual abuse that would constitute offenses under Part V (Sexual Offenses) and Part VI (Child Abuse) of Chapter 707. Further, the bill provides a two-year window for revival of all actions that are presently time-barred, no matter how long ago the sexual abuse occurred, except as against the State. Although claims are revived against all others, the bill specifically provides that the State is exempt from revived claims. Finally, the bill substantially expands the concept of child sexual abuse to now include abuse of the child by another minor.

While people often single out the Catholic Church for past instances of abuse, the problem is by no means unique to the Church. There is always the potential for abuse in any institution that deals with, supervises or cares for children.

Studies actually indicate that the institutions most likely to foster an atmosphere of abuse are not private institutions, but public ones. As indicated by a study prepared for the federal Department of Education, 6.7% of students in public schools nationwide have reported being sexually abused by an educator, a much higher percentage than the reported incidence of clergy abuse of children. (U.S. Department of Education, "Educator Sexual Misconduct: A Synthesis of Existing Literature" (2004).) Government reports also indicate that, across the country, there has been a high incidence of sexual abuse in juvenile detention facilities, with 10.3% of incarcerated youth reporting they had been sexually abused by a facility staff member during the prior year. (U.S. Department Justice, Bureau of Justice Statistics, "Sexual Victimization in Juvenile Facilities Reported by Youth 2008-09" (2010).)

These rates of abuse are much higher than those reported in the private sector, including incidents of abuse involving clergy of the Catholic Church.

The bill, however, does not recognize this. Instead of protecting children in such situations, the bill perversely and explicitly exempts the State from liability for time-barred claims, while at the same time reviving such claims against all other institutions.

There is no rational basis for making such a distinction, especially given the empirical data regarding incidents of abuse occurring in public institutions. Further, the clear message this legislation sends is that children who have suffered abuse by State employees or under the State's control are not as worthy of legal redress as those who have suffered abuse in a private setting. For example, if a child is abused by a teacher in a private school, under this bill there is a revived right to assert a claim against the school. If the same identical situation occurred in a DOE school, however, there would be no ability to recover.

Although the State in this bill is exempted, many other institutions, including private elementary and secondary schools, Boy Scouts, Girl Scouts, YMCA, YWCA, Boys' and Girls' Clubs, childcare programs, preschools, after school programs, camps, churches, and youth-at-risk programs, will be substantially affected by the revival of claims already barred by the statute of limitations. **Because of the lapse of time, many institutions potentially subject to suit under this bill no longer have the ability to meaningfully defend themselves from such claims.**

The reason for statutes of limitation is to reflect the fact that, over time, individual memories fade, witnesses who may prove or disprove a claim have died or are no longer available, and written records may no longer be available that would have relevance to the case. Especially in the case of nonprofits, record-keeping over a prolonged period may be far from ideal. Boards and staff change, and institutional memories are lost.

This bill, however, would now allow the assertion of claims going back for an unlimited period of years. Many institutions may be put in the situation of defending themselves in situations where not only is there a lack of evidence, but the abuser and anyone who may have been at fault for negligently overseeing or supervising the abuser are long gone. All that remains as a target for litigation may be the institution, which is now without any practical way to defend itself from the allegations.

This bill would have substantial negative impacts on the ability of nonprofits to remain open and provide services. Many nonprofits that provide services for children and families do so on very thin budgets, especially in these economically challenging times. The cost of defending against a single claim brought under this bill could have a devastating impact. Further, to the extent that such claims can be insured against, it would seem that premiums for such insurance could increase substantially if this bill became law. Again, many nonprofit organizations may not be able to pay for such insurance, and it is quite possible that such organizations would simply cease to provide services rather than the organization, as well as its directors and officers, being exposed to suit.

Another very disturbing feature of this bill is that it appears to expand the scope of claims considered child sex sexual abuse beyond abuse by adults against children. This is because the bill purports to extend the statute of limitations to within “[e]ight years of the date the plaintiff or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later.”

Thus, no longer is the concern of this legislation the preservation of claims where it involves sexual abuse of a minor resulting from the actions of an adult such as a coach, teacher or pastor. Now, the concept of child sexual abuse is being expanded to include situations where two minors are sexually involved with one another. Have the ramifications of this been thought through? Are schools now exposed to liability where something occurred in the vicinity of a school dance? What about actions of juvenile campers with each other, of which the camp was not even aware? Are claimants now able to say that the camp should be liable because it was “responsible” for campers at the camp?

Finally, this bill will not provide any additional protection for children. While not belittling in any way the suffering that those already abused have suffered, as we have previously testified, we believe that the focus of efforts at preventing sexual abuse should be on prevention. Over the past few years, as this problem has come to light, churches, schools and other nonprofits have taken substantial steps to reduce the possibility for abuse to occur, including substantially increased screening and background checks on potential teachers and employees, accountability and reporting procedures, and supervisory procedures to ensure that children are not put in situations and environments where they could be abused. This bill, however, which resuscitates claims that are 30, 40, or 50 years old, will not do anything to make children safer today.

For these reasons, we believe this bill should be held in committee.

Thank you for the opportunity to testify.



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: March 22, 2012

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair
Committee on Judiciary

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: S.B. 2588, S.D. 1, H.D. 1
Relating to Limitation of Actions

Good afternoon Chair Keith-Agaran, Vice Chair Rhoads and members of the Committee on Judiciary. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

The SATC supports S.B. 2588, S.D.1, H.D 1. It is commendable to expand the ability of sexual assault victims to seek civil compensation. We respectfully recommend, however, that section (d) be omitted. We believe it is unnecessary, time-consuming and costly to the plaintiff to require a certificate of merit be filed by the plaintiff's attorney to determine the veracity of the claim. There is a "good faith" requirement already imposed on attorneys via the Hawaii Rules of Civil Procedure requiring them to bring only meritorious claims before the Court. Further, section (c) in this proposed legislation allows the recovery of attorneys' fees from a false accusation.

In summary, SATC supports this important victim-center legislation and believes it can be strengthened if section (d) is omitted. Thank you for allowing SATC the opportunity to testify.

CARDOZO

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

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07

March 21, 2012

SUBMITTED VIA WEB DROP/EMAIL

Hon. Rep. Gilbert S.C. Keith-Agaran, Chair
Hon. Rep. Karl Rhoads, Vice Chair
House Committee on Judiciary
State Capitol
Conference Room 325
415 South Beretania Street
Honolulu, HI 96813-2425

RE: Hearing Before Committee on Judiciary and Labor on S.B.2588, S.D.1 H.D. 1
Relative to the Statute of Limitations for Civil Actions Involving Childhood Sexual
Abuse (March 22, 2012 2:15a.m.)

Dear Honorable Representatives Keith-Agaran, Rhoads & Members of the Committee:

I commend you and the Committee for taking up S.B 2588, S.D.1, H.D. 1, which would extend and toll the statute of limitations for civil actions brought by minor victims of sexual offenses, and revive for two (2) years some actions for which the statute of limitations had previously lapsed. **If passed, it will put Hawaii in the forefront of child protection.**

There are untold numbers of hidden child predators in Hawaii who are preying on one child after another, because the statutes of limitations have been configured to give them that opportunity. This bill reduces the present danger to Hawaii's children.

This bill is a sunshine law for children. There is an epidemic of child sex abuse around the world. At least one in four girls is sexually abused and at least one in five boys. Sadly, 90% never go to the authorities and the vast majority of claims expire before the victims are capable of getting to court. Most victims are abused by family or family acquaintances. This bill would protect the children of Hawaii by making it possible for victims to come forward and identify their perpetrators in a court of law. It would also bring delayed, but still welcome, justice to these victims.

By way of introduction, I hold the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where I specialize in church/state relations and constitutional law. My most recent book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008), makes the

case for statute of limitations reform in the child sex abuse arena. I am the leading expert on the history and constitutionality of retroactive statutes of limitations with respect to child sex abuse and have advised many child sex abuse victims on constitutional issues.

There are three compelling public purposes served by window legislation:

- (1) It identifies previously unknown child predators to the public so children will not be abused in the future;**
- (2) It gives chance child sex abuse survivors a fair chance at justice; and**
- (3) It cures the injustice wreaked by the current unfairly short statute of limitations that protect child predators and silence child sex abuse victims.**

I have been involved in statute of limitations reform in numerous states. This is the only tried and true method of identifying the many hidden child predators. As Professor Timothy Lytton has documented, civil tort claims have been the only means by which survivors of clergy abuse have been able to obtain any justice. Timothy Lytton, *Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Sexual Abuse* (Harvard University Press, 2008).

This is a vibrant national movement to protect our children. Legislative reform for statutes of limitations for child sex abuse victims is on the rise. Guam's bill removing the statute of limitations and creating a two-year window was signed into law by Governor Calvo on March 10, 2011.¹ Virginia² also passed and signed into law legislation extending its statutes of limitations in 2011. Florida³ and Illinois⁴ each extended or eliminated their statute of limitations in 2010. Bills that would eliminate, extend, or create windows for the statutes of limitations covering child sex abuse are pending or have passed in South Dakota,⁵ Connecticut,⁶ New Jersey,⁷ New York,⁸ and

¹ Bills No. B033 & B034-31(COR), Acts To Amend § 11306 Of Article 3, Chapter 11, Title 7 Of The Guam Code Annotated; Relative To The Statute Of Limitations For Civil Actions Involving Child Sexual Abuse, removing the statute of limitations and establishing a two-year window of opportunity for child sex abuse victims whose claims have expired under the Guam statute of limitations to bring their civil claims, now Public Laws No. 31-06 & 31-07 (2011); Erin Thompson, *Sex Abuse Bills Now Public Law*, PACIFIC DAILY NEWS (Mar. 10, 2011), available at <http://www.guampdn.com/article/20110310/NEWS01/103100301/Sex-abuse-bills-now-public-law>.

² VA. CODE ANN. § 8.01-243(D) (2011), formerly H.B. 1476, 2011 Gen. Assemb., 2011 Reg. Sess., (enacted) (extending the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues).

³ FLA. STAT. ANN. § 95.11(7) (2010) (enacted) (eliminating statute of limitations for sexual battery if victim was under 16 years old, for claims not barred as of July 2010).

⁴ 735 ILL. COMP. STAT. 5/13-202.2 (2010) (enacted) (expanding statute of limitations for injury based on childhood sexual abuse to within 20 (previously 10) years of the date the limitation period begins to run or within 20 (previously 5) years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and the injury was caused by that abuse).

⁵ H.B. 1218, 87th Leg. Sess., 2012 Reg. Sess. (S.D. 2012) (pending) (rescinding the statute of limitations for any civil cause of action arising out of childhood sexual abuse).

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Oregon.⁹ Bills—including two creating a most important civil “window”—were recently introduced in both houses of the Pennsylvania legislature as well.¹⁰

Information on the statutes of limitations for child sex abuse can be found on my website, www.sol-reform.com.

Statute of limitations reform is the one tried and true means that will identify the many hidden child predators who are grooming children in Hawaii right now. The window in California led to the public identification of over 300 perpetrators previously unidentified. Delaware also enacted a window, which has led to the public identification of dozens of perpetrators previously hidden. Given that most child perpetrators abuse many children over the course of their lives,¹¹ window legislation does far more than create justice for victims in the past. It also forestalls future abuse of today’s children.

SOL reform has very few detractors other than the Catholic bishops, who have misleadingly argued that window legislation is unconstitutional on the theory that it “targets” the Church. Window legislation does not target any particular perpetrator or organization. A federal trial court in the Ninth Circuit persuasively upheld the California window against such an argument. See *Melanie H. v. Defendant Doe*, No. 04-1596-WQH-(WMc), slip op. (S.D. Cal. Dec. 20, 2005).

⁶ S.B. No. 784, 2011 Gen. Assemb., 2011 Reg. Sess. (Conn. 2011) (pending) (eliminating limitation of time for bringing a civil action with respect to a new occurrence of sexual abuse, sexual exploitation or sexual assault in order to recognize the severity of such occurrences and give victims increased access to the civil court system.)

⁷ No. S.2405, 214th Legis. Sess., 2010-2011 Reg. Sess. (N.J. 2011) (pending) (eliminating statute of limitations for child sex abuse).

⁸ No. A.5488, 234th Gen. Assemb., 2011-2012 Reg. Sess. (N.Y. 2012) (pending) (extending the statute of limitations in criminal and civil actions for certain sex offenses committed against a child less than eighteen years of age, and creating a one year civil “window”).

⁹ H.B. 4100, 76th Gen. Assemb., 2011-2012 Reg. Sess. (Or. 2012) (pending) (eliminating criminal statute of limitations for sexual abuse crimes committed against minors). Oregon extended its civil limitations period regarding injuries arising out of child sex abuse in 2009. OR. REV. STAT. §12.117 (2009).

¹⁰ H.B. 832, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (eliminates the statute of limitations for number of enumerated criminal offenses involving child sexual abuse); H.B. 878, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (extends the statute of limitations in all civil cases not encompassed by House Bill 832 by allowing claims to be brought in court up to 32 years after majority; *and* establishes civil “window” which allows any suit that was previously barred from court solely on statute of limitations grounds to commence within the two-year period); S.B. 1392, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (extends statute of limitations from to 32 years from majority; *and* establishes all important 2 year civil “window” to allow for previously procedurally time-barred child sex abuse claims to commence).

¹¹ KENNETH V. LANNING, *CHILD MOLESTERS: A BEHAVIORAL ANALYSIS* 5, 37 (4th ed. 2001) available at http://www.cybertipline.com/en_US/publications/NC70.pdf. (“Except for child prostitution, most sexual-exploitation-of-children cases in the United States involve acquaintance molesters who rarely use physical force on their victims. . . . Although a variety of individuals sexually abuse children, preferential-type sex offenders, and especially pedophiles, are the primary acquaintance sexual exploiters of children. A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”).

Some have argued that retroactive legislation is unconstitutional. While such an implication was true in the nineteenth century, it is no longer true under the federal Constitution, as the United States Supreme Court has explained: “The presumption against statutory retroactivity had special force in the era in which courts tended to view legislative interference with property and contract rights circumspectly. In this century, legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments.” Landgraf v. USI Film Prods., 511 U.S. 244, 272 (1994); see also Republic of Austria v. Altmann, 541 U.S. 677 (2004).

In a case decided last year, the Delaware Supreme Court, sitting en banc, upheld a two-year window against a due process challenge. Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247 (Del. 2011). The California one-year window also was held to be constitutional. See Deutsch v. Masonic Homes of California, Inc., 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008).

The majority of states has not found retroactive statutes of limitations unconstitutional. See Catholic Bishop of N. Alaska v. Does, 141 P.3d 719 (Alaska 2006); San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa, 972 P.2d 179 (Ariz. 1999), superseded by statute, Arizona Rev. Stat. § 12-505 (2010); Deutsch v. Masonic Homes of California, Inc., 164 Cal. App. 4th 748, 760, 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008); Liebig v. Superior Court, 257 Cal. Rptr. 574 (Cal. Ct. App. 3d 1989); Mudd v. McColgan, 183 P.2d 10 (Cal. 1947); Shell Western E&P, Inc. v. Dolores County Bd. of Comm’rs, 948 P.2d 1002 (Colo. 1997); Rossi v. Osage Highland Dev., LLC, 219 P.3d 319 (Col. App. 2009) (citing In re Estate of Randall, 441 P.2d 153, 155 (Col. 1968)); Roberts v. Caton, 619 A.2d 844 (Conn. 1993); Whitwell v. Archmere Acad., Inc., C.A. No: 07C-08-006 (RBY), 2008 Del. Super. LEXIS 141 (Del. Super. Ct. April 16, 2008); Riggs Nat’l Bank v. District of Columbia, 581 A.2d 1229 (D.C. 1990); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661 (Ga. 1996); Gov’t Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); Roe v. Doe, 581 P.2d 310 (Haw. 1978); Henderson v. Smith, 915 P.2d 6 (Idaho 1996); Hecla Mining Co. v. Idaho State Tax Comm’n, 697 P.2d 1161 (Idaho 1985); Metro Holding Co. v. Mitchell, 589 N.E.2d 217 (Ind. 1992); Ripley v. Tolbert, 921 P.2d 1210 (Kan. 1996); Shirley v. Reif, 920 P.2d 405 (Kan. 1996); Kienzler v. Dalkon Shield Claimants Trust, 686 N.E.2d 447 (Mass. 1997); Rookledge v. Garwood, 340 Mich. 444 (Mich. 1954); Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002); Cosgriffe v. Cosgriffe, 864 P.2d 776 (Mont. 1993); Panzinov. Continental Can Co., 364 A.2d 1043 (N.J. 1976); Alsenz v. Twin Lakes Village, 843 P.2d 834 (Nev. 1992); Bunton v. Abernathy, 73 P.2d 810 (N.M. 1937); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069 (N.Y. 1989); In Interest of W.M.V., 268 N.W.2d 781 (N.D. 1978); Pratte v. Stewart, 929 N.E.2d 415 (Ohio 2010); McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); McDonald v. Redevelopment Auth., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008); Bible v. Dep’t of Labor and Indus., 696 A.2d 1149 (Pa. 1997); Stratmeyer v. Stratmeyer, 567 N.W.2d 220 (S.D. 1997); Ballard Square Condo. Owners Ass’n v. Dynasty Constr. Co., 146 P.3d 914 (Wash. 2006) superseded by statute, Wash. Rev. Code 25.15.303, as recognized in Chadwick Farms Owners Ass’n v. FHC, LLC, 160 P.3d 1061 (Wash. 2007); Neiman v.

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Am. Nat'l Prop. & Cas. Co., 613 N.W.2d 160 (Wis. 2000) (open question); RM v. State Dept. of Family Servs., Div. of Public Servs., 891 P.2d 791, 792 (Wyo. 1995).

Hawaii law supports the window. The Hawaii Supreme Court has upheld retroactive application of a newly extended statute of limitation to revive claims that previously expired. Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978) (holding that "[t]he right to defeat an action by the statute of limitations has never been regarded as a fundamental or vested right. . . . [W]here lapse of time has not invested a party with title to real or personal property, it does not violate due process to extend the period of limitations even after the right of action has been theretofore barred by the former statute of limitations."); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999).

Hawaii does provide for a two-year (2) statute of limitations for repressed memory cases, but victims typically have a difficult time dealing with such memories. Two years is a very short period of time within which to process the information, obtain the needed counseling to be ready to go to court, and then to find an attorney and proceed to the judicial process. The window would help them as well as the vast majority of victims, who do not have repressed memories and simply could not get to court before the statute of limitations expired.

Once again, I applaud you for introducing legislation intended to help childhood sexual abuse victims, and the Committee for taking up the cause of child sex abuse victims in this way. Hawaii's children deserve the passage of statutes of limitations reform to protect children today and in the future, and to achieve justice for the many victims suffering in silence. This bill creates a two-year (2) window of opportunity for Hawaii's child sex abuse victims who were locked out of the courthouse by unfairly short limitations periods. This is a huge step forward for Hawaii's children.

Please do not hesitate to contact me if you have questions regarding window legislation or if I can be of assistance in any other way.

Sincerely,

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Testimony for SB2588 on 3/22/2012 2:15:00 PM

Testimony for SB2588 on 3/22/2012 2:15:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, March 21, 2012 6:23 PM

To: JUDtestimony

Cc: breaking-the-silence@hotmail.com

Testimony for JUD 3/22/2012 2:15:00 PM SB2588

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Dara Carlin, M.A.

Organization: Individual

E-mail: breaking-the-silence@hotmail.com

Submitted on: 3/21/2012

Comments:

Good Afternoon Representatives and my apologies for not being able to testify in-person today for this important piece of legislation.

Although there is more information and resources available about child sexual abuse now then there was 20 years ago, it can take just as long for a victim to disclose their abuse due to the consequences and trauma of what they experienced.

Just this winter, the nation was shocked hearing instances of child sexual abuse that were covered up for YEARS because of who the perpetrators were and Hawaii had its own share of child sexual abuse-related skeletons emerge with the Hawaii School for the Deaf & Blind scandal and the arrest of Cecilio Rodriguez in California.

If you look at these stories, you'll see that there wasn't just one incident of abuse which is a testament to how strong the shame and secrecy of child sexual abuse is. When the victims of such abuse are finally able to verbalize what happened to them, some access to justice should be made available to them but instead, many are told that they've gone beyond the statute of limitations so there is no recourse. This shouldn't be the case.

Please support this measure that will increase a child sex abuse victim's ability to receive justice for the crime/s committed against him/her.

Thank you for this opportunity to provide testimony in support of this measure.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

March 21, 2012

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Committee on Judiciary members:

I am a survivor of childhood sexual abuse and I support SB2588 being heard on Thursday, March 22, 2012, 2:15 PM.

As a victim of childhood sexual abuse, you are very confused and scared, especially if the perpetrator is someone from your family, such as my half-brother in my case, or from an institution that you are told you can trust, such as a church, school, etc. Besides being confused on who you can trust, there are feelings of shame and guilt that the abuse was your fault. Imagine having these feelings as an 11 year old child; it would be very difficult to come out and tell someone about your situation. I am now 36 years old and am finally able to freely talk about my abuse. I have seen various therapists for the past 9 years and have overcome addictions, anger, and low self-esteem. Unfortunately, the statute of limitations for civil and criminal action has passed in the state of Washington where the abuse occurred.

As you can see, child sexual abuse can be crippling. It is estimated that 1 out of 6 men have been sexually abused. The number maybe higher but it is hard to quantify because many men live in silence due to fear and shame. It can take years for a man to even admit that he was sexually abused, let alone be strong enough to name his perpetrator in court. Knowing that the statute of limitations has passed may contribute to men not confronting their past and seeking help to improve their mental well-being.

I support the intent of this bill to give survivors of childhood sex abuse their day of justice and feel whole again. But honestly, I would like to see the statute of limitations be extended even longer or be completely eliminated. Other states have enacted laws that extended the statute of limitations past the age of 26 and even eliminated it. Just a few weeks ago on March 2, 2012, South Dakota governor Dennis Daugaard signed Senate Bill 68 that eliminated the statute of limitations for civil actions in certain rape offenses where the victim was under age 13. In 2009, Oregon passed HB 2827, which extended the civil statute of limitations until the victim reaches the age of 40, or until 5 years after the discovery of connection between injury and abuse. Currently, Pennsylvania, Maine, and Arizona are also considering bills that would extend or eliminate the statute of limitations. Also, I find the certificate of merit an unnecessary hurdle for a victim to bring civil action against their perpetrator. In no other legislation passed that has extended the statute of limitations or opened a window for past claims, has a certificate of merit been required. It takes time for a victim to trust their therapist so they can open up and talk about such heinous abuse. It is very unreasonable to have them find another therapist or counselor that they trust and feel comfortable with in order to obtain a certificate of merit. This bill already states consequences for frivolous lawsuits and the concern for meritless lawsuits should be no more of a problem than in other areas of the law.

Please consider the children of Hawaii when considering this bill. Enacting such legislation will help identify predators and keep them from abusing more victims. After California passed its "window legislation" which opened a one year window in 2003, 300 perpetrators were identified. Thank you for considering this bill.

Andre Bisquera

Testimony for SB2588 on 3/22/2012 2:15:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, March 21, 2012 10:04 PM

To: JUDtestimony

Cc: breaking-the-silence@hotmail.com

Testimony for JUD 3/22/2012 2:15:00 PM SB2588

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Child Survivor by Proxy through Dara Carlin, M.A.

Organization: Individual

E-mail: breaking-the-silence@hotmail.com

Submitted on: 3/21/2012

Comments:

Honorable Representatives,

What happened at Penn State and the MN Archdiocese recently is a perfect example of why we need SB2588.

If you noticed the victims' disclosures about their abuse came out way later, YEARS later, then it actually happened and after one victim stepped forward so did another and another and another. I would like to see the whole statue of limitations eliminated all together and to ask to be able to take actions against a perpetrator that was not quite an adult (say 15 -17 not yet an adult but should have known better) when the crime took place.

Child sexual abuse and incest are silent crimes that are HUMILIATING, DEGRADING, AND INTIMIDATING for the victims (things that I'm feeling right now as I'm writing this) and it's made all the worse when the abuser is someone from your own family.

I am also angry, enraged really, about the fact that I have to DEFEND why we need this bill that should already exist. Because this bill has not been put into law, my abuser has been able to get away with all he's done to me and he knows he's untouchable! Can you imagine how that feels to a victim!?

As a victim I had a mother who didn't care and who lead me to believe (and later told me) that the sexual abuse was my fault. I didn't know if my father knew about it but I feared that speaking up (as a teenager through adulthood) would have ruined his reputation since he was very well known and loved in the community. I also loved my father and didn't want to hurt him with the truth so I accepted and lived with the attitude that "it was my fault". I've struggled my entire life with the consequences of my silence and abuse until the day my abuser moved in next door to me and the trigger was pulled.

I became mad at everything, had nightmares mixed with insomnia every night and decades after the abuse, I was recommended to psychologists. They tried their best to "change my mindset" that was "conflicting with my reality" but no matter how hard I tried, it wasn't working for me and I only developed more symptoms. The symptoms then became physical and because my father passed, I finally "broke my silence" but doing so cost me my whole family. When I protested my abuser's proximity to me, I was told I have no recourse and this is the anger that's given me the strength to speak out.

I believe we, as a community, are sending way too many mixed messages as to whether incest and

sexual abuse are crimes or not. The passage of time affords the abuser a window to manipulate, threaten or charm victims into submission until the statute of limitations are up. These abusers are very good at their game and as a victim you have great fears for your survival. Coming forward is not as easy as one might think: what if no one believes me? Suppose disclosing your abuse ends up destroying your relationships with your family? So you've been abused AND you lose your family support for it while the abuser is welcomed at family functions? And even to move in next door?

There should be some kind of fairness or justice for victims. It's extremely hurtful and embarrassing to the victim when others don't take this crime SERIOUSLY. It's made worse by judgmental put downs, a total dismissal of your feelings, giving you no validity to your experience. People questioning MY sanity when they should be questioning my abuser, and having no recourse for crimes committed against me.

Please don't let what's happened to me happen to any other victim of child sexual abuse. Please give us an avenue to recoup expenses spent on my mental health recovery and/or in my case, the extra expense of dental work due to grinding my teeth down to the core as well as financing a move away from my abuser if SB2588 doesn't pass.

My husband and I spent all of our money to build our home that my abuser decided after the fact to move in next door. If not in justice, just in the name of FAIRNESS - shouldn't he have to move for the crimes he committed against me rather than my husband and me having to walk away from the home we built?

Please give victims the option for justice when they're ready to ask for it, don't leave abusers with the power to wag a statute of limitations in a victim's face as they're able to do now.

I still feel the intimidation of my perpetrator (he doesn't feel like a brother in the right sense), he has challenged me to go to this length to basically beg for a law to help me have a life of normalcy. Living next to him only reminds me of what I'm trying to forget. He presents himself as very cocky and arrogant that this bill will never pass and it infuriates me. He is denying me of the space to heal as if he has done nothing to me, this isn't fair.

I feel the intimidation and fear just like I did as a child trying to convince you "the law makers" to believe how important it is passing a bill like this. As a child I so feared taking the chance of telling one of authority; many things go through your mind - you think about it all the time mulling it over and over again the pros and cons of TELLING: Will your perpetrator hurt me or kill me? Will my mom or father believe me or will they blame me? If they blame me, what will happen to me? Will I get in serious trouble? Whippings? Will they hate me - or love me? Will they send me away? Is any of this a chance you want to take as a child? NO it's so scary!

Now I feel the same way trying to find the right words to get you all to believe me - spending every minute of my day thinking "How I can find the right words to get anyone to understand and feel my pain?" - or will all my efforts only result in embarrassment? In the end will all of this be rejected by those who know I'm trying? (I'm already getting that from my own family)... but I keep feeling that if I could just get them to say "I finally get it", that you all were able to believe me and that this bill is important enough to turn into a law, then I can finally have peace. I am only one voice, but believe me when I say there ARE many, many others.